

MINUTES

**MONTANA SENATE
56th LEGISLATURE - REGULAR SESSION**

SELECT COMMITTEE ON CONSTITUTIONAL AMENDMENTS

Call to Order: By **CHAIRMAN WALTER MCNUTT**, on February 20, 1999
at 1:10 P.M., in Room 325 Capitol.

ROLL CALL

Members Present:

Sen. Walter McNutt, Chairman (R)
Sen. Tom A. Beck (R)
Sen. Mack Cole (R)
Sen. Lorents Grosfield (R)
Sen. Linda Nelson (D)
Sen. Jon Tester (D)
Sen. Fred Thomas (R)
Sen. Bill Wilson (D)

Members Excused: None.

Members Absent: None.

Staff Present: Greg Petesch, Legislative Branch
Adrienne Pillatzke, Committee Secretary

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted:
Executive Action: SB 494; SB 496; SB 495; SB
493; SB 498; SB 497

EXECUTIVE ACTION ON SB 494

Discussion:

SENATOR GROSFIELD recommended the committee pass all of the bills out of executive action. He commented on CI-75 and its effect on these bills.

He said SB 494 and SB 496 referred to the statutory and SB 495 referred to the referendum. He stated SB 494 changes the signature gathering requirements from 5% to 10% and SB 496 changes 1/3 of legislative districts to 1/2 of the counties. He commented on SB 494, section 2, lines 25-28.

Greg Petesch explained the word change for SB 494, section 2, line 25-28.

Motion/Vote: SEN. GROSFIELD moved that **AMENDMENT FOR SB 494 BE ADOPTED. Motion carried 7-1 with Nelson voting no.**

SENATOR TESTER addressed the percentage increase of the bills. He does not think it is necessary to increase the percentages. He does not want this to be a reactionary measure to what has occurred in the past election. He commented on the statistics on the Constitutional Initiatives brought forth by Secretary of State, Mike Cooney. He said a message sent by the people is they want to be able to discuss taxes and have some say in what is going on. He said if the percentage is increased the committee must be aware they are sending a message. The message might be the public has gone too far. He said he likes the concept of changing from districts to counties. He commented on the signature gathering process and the impact of big business will have on the State of Montana. He believes the committee needs to step back and reanalyze.

SENATOR BECK said he wants a bill to come out of the committee which will live through the Constitutional muster. He commented on the change from legislative districts to counties. He thinks it will create some problems.

SENATOR TESTER reminded the committee there has to be minimum number of signatures based on the previous year's Governor's election. He hopes the bill will pass because it offers some positive things about getting rural Montana involved.

SENATOR THOMAS supports these pieces of legislation. He is not trying to make it harder to get something on the ballot. He thinks they need to raise the threshold of activity and the threshold of seriousness to legislation. He commented on the initiative process in Montana and the abuse of the process. He said they need to raise the seriousness of the initiative process so that it is more significant what they do. They need to look

in the long run of Representative Hibbard's bill that sets up some process as well.

{Tape : 1; Side : A; Approx. Time Counter : 18}

SENATOR NELSON said SB 494 will raise a red flag to the people. She said the public might think the percentage increase is going too far.

SENATOR COLE commented on the percentage change and supports the change to 10%.

SENATOR WILSON said it all comes down to what issue that was important to us got nailed. He liked I-137 but didn't like what happened with term limits. He will support some of the bills. He reminded the committee that the public will have a chance to vote on the issue. He commented on the language on ballots.

SENATOR GROSFIELD said there was a potential Constitutional problem with SB 497 which is why he proposed the amendment at the hearing. He asked Greg Petesch to comment on the change of 1/3 of legislative districts to 1/2 of the counties. **Greg Petesch** agreed with Senator Grosfield.

SENATOR GROSFIELD said when they are dealing with how to gather signatures, they are not dealing with the vote. He said the committee agreed there are some problems with the process. He said by passing these bills they are giving the people a choice.

SENATOR BECK said the only issue is the change from 5% to 10%. He asked the committee if anyone thought the change was going too far too fast and if anybody would be more comfortable with 8%.

SENATOR NELSON said she would be more comfortable with 8%.

{Tape : 1; Side : A; Approx. Time Counter : 28.8}

Motion: SEN. BECK moved that **CHANGE THE PERCENTAGE FROM 10% TO 8% BE ADOPTED.**

Discussion:

SENATOR THOMAS supported the amendment. He said no matter what percentage change the committee agrees to. It will affect every Montanan the same.

SENATOR WILSON clarified his remarks from earlier. He would like to see the public debate the issues.

SENATOR TESTER said if the committee amended the bill to 8%, he would send it to the Floor.

Vote: Motion **carried unanimously.**

Motion/Vote: SEN. GROSFIELD moved that **SB 494 DO PASS AS AMENDED.** Motion **carried unanimously.**

{Tape : 1; Side : A; Approx. Time Counter : 32}

EXECUTIVE ACTION ON SB 496

Discussion:

SENATOR GROSFIELD commented on page 2 of the ballot language. **Greg Petesch** read the amendment which would change page 2, section 3. **SENATOR GROSFIELD** said the language in the bill does not give the voter any idea of what is going on. He said the amendment clarifies what they are doing.

Vote: Motion **carried unanimously.**

SENATOR BECK asked if the change from 1/3 to 1/2 of the counties should be written in the bill or should it be separate. **Greg Petesch** thinks it is clearly stated in the title of the bill. He said they need to amend the title to reflect the statements of implication. He proposed it to read, for requiring that signatures be gathered in 1/2 of counties rather than legislative districts.

SENATOR GROSFIELD said that implies it is 1/2 of the legislative districts. He said there is a statutory requirement that the "for" statement and the "against" statement can only be 25 words.

Greg Petesch said it would be in the limit if the bill was modified to say, "for requiring that signatures be gathered in 1/2 of counties rather than 1/3 of legislative districts for statutory initiative."

Motion/Vote: SEN. BECK moved that **CHANGE THE WORDING FOR SIGNATURE GATHERING BE ADOPTED.** Motion **carried unanimously.**

SENATOR WILSON asked Joe Kerwin to explain the latitude the legislature has to expand what the voter sees on the ballot. **Joe Kerwin, Deputy Secretary of State for Elections,** said Representative Hibbard's bill addresses his question. He

explained what HB 636 will do. **SENATOR WILSON** asked if there has ever been an attempt to include a short pro and con. **Joe Kerwin** didn't know if it has ever been addressed. There would be some difficulties determining the language to make sure it was not bias more in favor for the "for" statement or the "against" statement. **SENATOR WILSON** said the only thing they could do is make a longer explanation. **Joe Kerwin** replied they could provide more explanation for what the initiative or the referendum does.

SENATOR MCNUTT asked Greg Petesch address the issue. **Greg Petesch** said there would be difficulty in allowing it on the ballot. It would be something the public wouldn't be voting on and that is why the "for" and "against" statements are required to read identically so there is no bias in presenting the position.

SENATOR WILSON asked if the "for" and "against" is limited to 25 words and if HB 636 would expand it to 50. **Greg Petesch** replied yes and it would make it easier to clearly state exactly what the change being made is.

Motion: **SEN. GROSFIELD** moved that **SB 496 DO PASS AS AMENDED.**

Discussion:

SENATOR COLE asked if there is only one amendment being proposed. **SENATOR GROSFIELD** explained what the amendment Mr. Petesch read would do. **SENATOR COLE** asked if the change from 5% to 8% should be adopted on the front. **Mr. Petesch** believed Senator Grosfield does not want all the changes in one bill. He wants to have the percentages in one bill and the change from districts to counties separate. **SENATOR COLE** asked if 5% would be in one bill and 8% in another. **Mr. Petesch** said he was correct.

SENATOR GROSFIELD said one of the witnesses in the hearing stated there might be a problem with the language on line 30. He said the language occurs in several places in the Constitution.

SENATOR MCNUTT asked Mr. Petesch for an explanation. **Greg Petesch** referred to Article 3, section 7. He said the amendment mirrors the existing language except it is changed from legislative districts to counties. He said it is the number cast and it has been interpreted. He said it has never been challenged as meaning in the last Governor's election.

Vote: Motion **carried unanimously.**

{Tape : 1; Side : B; Approx. Time Counter : 0}

EXECUTIVE ACTION ON SB 495

SENATOR GROSFIELD stated SB 495 deals with referendums. He said a referendum is where the people put an act on the ballot which they don't like which was passed by legislation. He said SB 495 changes the percent from 5% to 10% and changes 1/3 of legislative districts to 1/2 of the counties for referendums.

Motion: **SEN. BECK** moved that **CHANGE THE PERCENTAGE FROM 10% TO 8% BE ADOPTED.**

Discussion:

SENATOR NELSON asked if there is a number issue concerning 1/3 of the legislative district compared to 1/2 of the counties.

SENATOR GROSFIELD replied 1/3 of the legislative districts means house districts and there are 100 districts. He said 1/3 equal's 34 for the purposes of the election. He said 1/2 of the counties would mean 28 counties. **SENATOR NELSON** said they are still looking at the 10% of the qualified electors in the state.

SENATOR GROSFIELD replied they still have to meet the threshold of the maximum signature gatherers for the whole state.

SENATOR TESTER said the referendum issue is a different issue than the Constitutional initiative or the Constitutional amendment. He said he would resist the amendment. He would encourage the committee to leave the 5% in the bill and encourage them to adopt the county provision.

Vote: Motion carried 6-2 with Tester and Wilson voting no.

SENATOR GROSFIELD said Mr. Petesch had amendment for the language on the "for" and "against" statements. **Greg Petesch** read how the statement of implication would read.

Motion/Vote: **SEN. GROSFIELD** moved that **CHANGE LANGUAGE IN SECTION 3 BE ADOPTED.** Motion carried 7-1 with Wilson voting no.

Motion/Vote: **SEN. GROSFIELD** moved that **SB 495 DO PASS AS AMENDED.** Motion carried 6-2 with Tester and Wilson voting no.

{Tape : 1; Side : B; Approx. Time Counter : 7.4}

EXECUTIVE ACTION ON SB 493

SENATOR GROSFIELD said SB 493 changes from 10% to 15% for signature gathering for purposes of changing the Constitutional. He asked Greg Petesch to discuss the amendment. **Mr. Petesch** read how the statement of implication would read.

Motion/Vote: **SEN. GROSFIELD** moved that **AMEND THE STATEMENT OF IMPLICATIONS IN SECTION 2 BE ADOPTED. Motion carried unanimously.**

SENATOR GROSFIELD reminded the committee they are dealing with Constitutional changes. He said the bills see the Constitution is being treated with respect and care.

SENATOR BECK said he is concerned about the Constitutional process. He referred to Section 1, part 3 and asked if this would be the appropriate place to submit, 40% of the registered voter count would have to vote in favor to pass a Constitutional initiative. **Mr. Petesch** believed the change would need to be made on page 1, line 21.

SENATOR GROSFIELD asked him to explain his proposal. **SENATOR BECK** said he would like to see in an off year election there would still have to have 40% of the registered voter to vote in favor to change a Constitutional initiative.

SENATOR GROSFIELD asked if at least 40% of the registered voters did not vote then the Constitutional initiative would not pass not matter how many people voted for it. **SENATOR BECK** said if 35% of the people were the only ones who turned out for election, it would not pass if they all voted for it. He is tying it to the registered voters not to the people who voted.

SENATOR NELSON asked if it would not be a good idea to leave it at the 10% instead of raising it to 15%. **SENATOR BECK** thinks it should be easier to change a statutory law. He thinks there should be a really good reason to change the Constitution of the State of Montana. He commented on the past initiative to change the Constitution.

SENATOR MCNUTT said SB 493 deals with the number of signatures to get a Constitutional amendment on the ballot. He said maybe Senator Beck would propose the change for SB 497. **Greg Petesch** said the way the title to SB 493 is crafted the amendment is outside the scope of the bill. He believed it would be appropriate for SB 497.

SENATOR GROSFIELD said off year elections has less people show up to vote. He commented on the House elections. He said the effort of all the bills so there has to be more support and involvement of voters for an idea to get on a ballot.

Motion/Vote: SEN. BECK moved that SB 493 DO PASS AS AMENDED.
Motion carried 7-1 with Tester voting no.

{Tape : 1; Side : B; Approx. Time Counter : 19.5}

EXECUTIVE ACTION ON SB 498

SENATOR GROSFIELD said SB 498 changes from 1/3 to 1/2 of the counties for Constitutional changes. He asked Greg Petesch to explain the amendment. **Mr. Petesch** read the revised statement of implication being proposed.

Motion: SEN. GROSFIELD moved that **AMEND THE STATEMENT OF IMPLICATION BE ADOPTED.**

Discussion:

SENATOR BECK asked if Mr. Petesch said there might be some Constitutional problems dealing with the Constitutional initiatives. **Mr. Petesch** said the potential Constitutional problem was requiring voter approval in the counties rather than qualifying through signature gathering in counties.

Vote: Motion **carried unanimously.**

SENATOR GROSFIELD said they are setting the same standard for both Constitutional and statutory initiatives. He asked if the committee wants it go to 1/2 or 3/5.

SENATOR TESTER asked if the committee is trying to make it reasonably tough or nearly impossible. He said if the committee increases it to 2/3 of the counties, leave it at 15%, increase the election to 2/3, they won't have to worry about a Constitutional initiative ever passing. He believes it should be left at 1/2 of the counties.

SENATOR THOMAS thinks 1/2 of the county is fine. He said the likelihood these bills would be put together in a couple bills is high. Therefore in this bill there would be 1/2 of the county and potentially the 15%. He said that is the higher threshold then the statutory initiative.

SENATOR BECK asked if it was 40% of the legislative districts and not 1/3. **SENATOR GROSFIELD** replied 2/5. **SENATOR BECK** said there was a stronger process for getting a Constitutional initiative passed. He hopes the committee doesn't make it easier to change the Constitution of Montana.

Motion/Vote: SEN. BECK moved that SB 498 DO PASS AS AMENDED.
Motion carried unanimously.

{Tape : 1; Side : B; Approx. Time Counter : 26.5}

EXECUTIVE ACTION ON SB 497

SENATOR GROSFIELD explained the proposed amendment, SB049701.agp.

Motion: SEN. GROSFIELD moved that AMENDMENT SB049701.AGP BE
ADOPTED.

Discussion:

SENATOR BECK said he is concerned about the 40% of the registered voters and having a small turnout at an election. He said it would not take many votes to pass a Constitutional initiative if only 10% of the qualified registered voters voted. He wished the committee would tie it to a certain voter turnout and encourage a voter turnout.

SENATOR TESTER said 40% of the qualified electors are a higher percentage than 2/3 of the people who vote. **SENATOR BECK** said 2/3 of the people on a Presidential election. It would be less. **SENATOR TESTER** said School Bond Issue elections are the same. If you don't vote, you voted no. He said we need to be careful when talking about super majorities for passing these issues because then the minority dictates what is going to happen.

SENATOR GROSFIELD said if they interject the issue into the bill it will make the bill confusing to voters. He doesn't want this effort to fail because voters are confused. He asked if Senator Beck is changing 40% instead of the 2/3. **SENATOR BECK** said the point he is trying to make is in the off year elections. He commented on his frustrations of CI-75. He wants to make sure everybody is treated equally.

SENATOR TESTER said he sees it differently. He said they are protecting the people who don't go and vote. They are voting no by not voting.

SENATOR NELSON agreed with Senator Tester.

SENATOR BECK said there is a problem with the off year election. **SENATOR GROSFIELD** said if this was in effect then 26% of the people would not have been able to pass it. **SENATOR MCNUTT** said if the 2/3 rule had been then CI-75 would have failed.

SENATOR THOMAS thought they should leave it at a majority vote. He does not favor the threshold of 40% because the voters' registration is artificially pumped up by the federal statute. He said the committee should not go that route although it has good merit to consider.

Vote: Motion carried 5-3 with Tester, Thomas and Wilson voting no.

Motion/Vote: SEN. BECK moved that SB 497 DO PASS AS AMENDED. Motion carried 5-3 with Tester, Thomas, and Wilson voting no.

ADJOURNMENT

Adjournment: 2:30 P.M.

SEN. WALTER MCNUTT, Chairman

ADRIENNE PILLATZKE, Secretary

WM/AP

EXHIBIT (cas42aad)